

NO. 4:08-CR-00017-FL-1  
NO. 4:12-CV-00034-FL

ORDER

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The court hereby ADOPTS the recommendation of the magistrate judge as its own, and, for the reasons stated therein, petitioner's motion is DENIED, defendant's motion is GRANTED, and this matter is DISMISSED. The clerk of court is directed to close the case.

A § 2255 applicant "cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." Fed. R. App. P. 22(b)(1). "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When relief is denied on the merits, an applicant satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683–84 (4th Cir. 2001). When relief is denied on procedural grounds, an applicant satisfies this standard by demonstrating both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484–85. Petitioner has failed to make the requisite substantial showing and, therefore, is not entitled to a certificate of appealability. Accordingly, a certificate of appealability is DENIED.

SO ORDERED, this the 31st day of December, 2012.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is fluid and cursive, with the first name "Louise" being the most prominent part.

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LOUISE W. FLANAGAN  
United States District Judge